



ALGERIA: List of issues

Committee against Torture

**Alkarama's contribution to the list of issues prior to the
submission of the fourth periodic report of Algeria**

13 August 2010

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2. Introduction

The Committee against Torture considered the third periodic report on Algeria (CAT/C/DZA/3) on 2 and 5 May 2008, and issued its Concluding Observations on 15 May 2008 (CAT/C/DZA/CO/3). As per its review procedure, the Committee had asked the Algerian authorities to provide a summary of actions taken in follow up to four of its recommendations within a period of one year. A few days later, on 20 May 2008, the Algerian state submitted its final comments on these remarks, expressing its position on a number of points. It did not, however, explicitly address the issues raised in the four recommendations. To date, the Algerian authorities have not responded to this request despite a reminder from the Rapporteur for Follow Up on Concluding Observations, Ms. Felice D. Gaer.

Apart from providing follow up to the recommendations, we hope this contribution will give the Committee an idea of the difficulties encountered in documenting human rights violations in Algeria. Many of the questions that the Algerian government needs to answer stem from an analysis of the consequences of decisions taken in the last 20 years. A reference to some of these episodes can help to better understand the current situation. Weighty issues such as forced disappearances, massacres, sexual violence, a subservient justice system, incommunicado detention etc have not been dealt with by the Algerian authorities. Bouteflika's presidency, during which serious violations of human rights have declined but not disappeared, has seen the introduction of de-facto impunity. It is worth recalling that in 2006 the National Charter for Peace and Reconciliation was promulgated by Ordinance, formalising this impunity.

3. A Permanent State of Emergency

Under the pretext of combating terrorism, the Algerian authorities have proceeded since the interruption of the electoral process in January 1992 to the arrest of tens of thousands of suspected members or sympathisers of the Front Islamique du Salut, which was outlawed in March 1992. A state of emergency was declared on 9 February 1992. Several months later, on 30 September 1992, a Decree against terrorism was issued; some of its provisions, incorporated a few years later into the Criminal Code, are still in force today. An almost lawless atmosphere reigned, in which the various security services, and then from 1994, Groups for Self-Defense and Communal Guards, acted with impunity. During the curfew, which was introduced on 5 December 1992 and maintained in the seven largest northern wilayas until 18 February 1996, combined and special forces carried out raids and roundups; thousands of people were summarily executed, abducted, tortured and disappeared.

Even though the level of violence has dropped significantly, it must be emphasised that the structures of repression set up from 1992 have been considerably strengthened. Specifically, the head of the Department of Intelligence and Security (DRS), the department which was most involved in State terror and subversion, Mohamed Medien, aka Toufik, has retained his position, held since 1990; the main perpetrators of enforced disappearances, such as Djebbar Mehenna and Athman Tartag, have recently been promoted to the rank of major general, the highest rank in the Algerian army. Centers which are attached to the DRS, the infamous centers of territorial research and investigation (CTRI), and their various offshoots, still exist, including those in which thousands of people "disappeared" during the 90s. While many local militias appear to have been dismantled, others still exist, or have been incorporated into the Communal Guards which are about to be dissolved or assimilated into the Army. Additionally, police and gendarmerie numbers have been considerably strengthened. This has led to a greater militarisation of society than was the case during the conflict in the 90s, which explains in part why it is so difficult to organize civil society, especially in the fight against human rights violations and restrictions on civil liberties.

As emphasised by the Committee, it is incomprehensible for the state of emergency to still be in force more than 18 years after its enactment. The reasons given by the Algerian authorities are not convincing, as there is ample provision for the fight against terrorism in the ordinary laws. Yet in each of their public statements, the Algerian leaders say that terrorism has been "eradicated". In reality, the state of emergency is used primarily to quash the legitimate aspirations of civil society. It exists "to prevent a return to normal politics, which would imply a public debate on key issues

(unemployment, housing, transportation, schools, health ...).¹ Protest marches, union meetings, public debates, human rights organisations, in other words any expression of civil discontent, are all forbidden. The government does not allow any political or social protest in public places. On 13 May 2010, the authorities went so far as to order the administrative closure of the House of Algerian Autonomous Unions, on the eve of a meeting of the Maghreb Union Forum (MUF) which brought together trade unionists from various countries.² This decision also affected the *Syndicat National Autonome des Personnels de l'Administration Publique* (the National Autonomous Union of Public Personnel Administration – or SNAPAP), which lost its headquarters.

The continuing existence of the state of emergency is unconstitutional. Under articles 91 and 92 of the Constitution, it should be established by a fundamental law, and can only be extended for a specified period. A joint session of parliament is required to approve any such extension. Several Algerian lawyers complain that "due to the interministerial Decrees of 10 February and 25 July 1993, the state of emergency has become a state of siege. All powers are vested in the army",³ something implicitly recognized by the Algerian government in its statements to the Committee.

1. *If, as claimed by the Algerian authorities, the only measure still in force refers to the requisition by the Minister of Interior of Army units for public functions, why not repeal that Decree?*

2. *On what occasions has the Minister of the Interior used this measure in recent years?*

3. *Are the current laws not sufficient to combat terrorism?*

4. The Fight Against Impunity: A Major Challenge

Armed groups, some of which have never been precisely identified, have been active for years, but their crimes have not been systematically investigated. To date, the murders of countless public figures have not been solved. Suspects have been arrested; confessions have been extracted under torture and harsh sentences have been handed in hasty and unfair trials in some cases. But very often, the real perpetrators and sponsors of these targeted assassinations, which have affected all segments of Algerian society, have not been apprehended. Dozens of murders committed between 1993 and 1999 remain unpunished. Two examples serve to illustrate this: **Tahar Djaout**, journalist and writer, was the victim of an attack on 26 May 1993; he died a few days later. On 1 June, Belabassi Abdullah "confessed" on television, saying that Abdelhaq Layada, the "emir of the GIA" had sponsored the murder and that he had driven the car carrying three other accomplices, all of whom had since been "strangely" murdered in "clashes" with security forces. A year later, during his trial before the Special Court of Algiers, he claimed that these statements had been extracted under torture.⁴ Layada, meanwhile, was acquitted by the same court. Other suspects were also tried for the same crime but to date, neither the real perpetrators nor the sponsors, presented as Islamists, have been apprehended.

It is not unusual for murder investigations to be closed without any results being brought to light, as in the case of the lawyer, **Mr Youcef Fathallah**, Chairman of the Algerian League of Human Rights (ALHR), assassinated on 18 June 1994. It is unclear who was responsible, and the author was never identified. The ALHR has asked the Prosecutor-General of the Court of Algiers to open an investigation, in vain.

¹ Mokrane Aït Larbi, *avocat et militant des droits de l'homme: L'Etat d'urgence permet au pouvoir d'éviter le retour à une vie politique normale*, (in French only – Mokrane Aït Larbi, lawyer and human rights activist: "the state of emergency allows the authorities to avoid a return to normal politics"), El Watan, 5 February 2010.

² ICAR: International Support Committee for independent Algerian unionism, press release: *La fermeture arbitraire de la Maison des syndicats autonomes algériens doit être annulée* (In French only - *The arbitrary closure of the House of Independent Unions in Algeria must be reversed*), 19 May 2010, <http://www.cisa-solidaritesyndicats-algerie.org/spip.php?article13> (accessed 6 August 2010).

³ *La LADDH installe un comité de suivi: Levez l'état d'urgence!* (in French only - *The LADDH installs a monitoring committee: Lift the state of emergency!*), El Watan, 17 June 2003.

⁴ Salah Eddine Sidhoum, *L'intelligence qu'on assassine...*, (In French only – *The Murdered Intelligensia...*), Algeria-Watch, March 2003, http://www.algeria-watch.org/fr/mrv/mrvrap/sidhoum_intelligence.htm (accessed 19 July 2010).

4. Has the Algerian Justice system responded to all complaints and ordered the opening of investigations into the murders of public figures committed between 1993 and 1999?

However, it proved impossible to shroud the Lounes Matoub case in such secrecy. The authorities have tried to blame his assassination, on 25 June 1998, on several people including **Malik Medjnoun and Hakim Chenoui**. Both have been in prison since 1999, awaiting trial. The case of Malik Medjnoun was submitted to the Human Rights Committee. He was kidnapped on 28 September 1999 by the DRS, detained incommunicado for more than eight months and severely tortured. To date, he has been now imprisoned for over ten years without trial. The family of the victim, which has always doubted the official version that points to an assassination by the Armed Islamic Groups (GIA), has requested further investigation; this has not taken place. As for Ahmed and Hamid Cherbi, who both lived near the scene of the murder, they were abducted and tortured by the DRS for refusing to give false testimony; their stance led to the collapse of the whole scenario that sought to attribute the killing to a local armed Islamist group. In its concluding observations in 2006, the Human Rights Committee recommended that Malik Medjnoun be judged or released (see also below). Nothing has happened to date.

In its latest Concluding Observations, the Committee against Torture addressed the issue of women who were victims of rape attributed to armed groups. It recommended that "an independent commission be designated to investigate sexual violence committed during the internal conflict, with the results made public." We welcome this request. We also remind the Committee that the abductions of these women often occurred during the mass killings which took place. While men and older people of the family or village were murdered, many women were kidnapped. For the survivors, including thousands of orphans, the savagery of these crimes, the loss of loved ones and the impossibility of knowing the truth about the real perpetrators and sponsors of the atrocities is a permanent torture. Compounding this problem, the authorities have not allowed any investigations by human rights defenders; no information which would enable the establishment of the truth about the massacres can be collected. In its recent comments, in September 2007, the Human Rights Committee reminded the Algerian government of the need to conduct investigations, and that "those responsible for such violations, including state officials and members of armed groups, must be prosecuted and made liable for their acts." (CCPR/C/DZA/CO/3/CRP.1)

It goes without saying that any attempt to combat impunity is thwarted by texts that establish a *de facto* "amnesty", even though, officially, this term is not acknowledged. The promulgation of the Ordinance implementing the Charter for Peace and National Reconciliation in February 2006 drew criticisms and protests from the Algerian civil society, NGOs and international institutions, especially since the procedures for implementing these texts are not transparent. It seems obvious that security forces "of all stripes" have been granted a full amnesty; however, the status of members of armed groups is not as clear. To this day, the public does not know what steps have been taken against those who are not covered by the "amnesty", particularly those suspected of rapes, killings and bombings.

Several UN agencies have regularly reiterated to the Algerian authorities that this Ordinance was not in conformity with the principles to which the State has acceded, but any debate is stifled by arguing that the Charter for Peace and Reconciliation was greeted favorably by the public and adopted by referendum. However, the Charter is a political document for general application, presented by the media as capable of restoring peace in the country. It was to be approved or rejected by the public by answering the question: "Do you agree with the draft Charter for Peace and National Reconciliation?" Despite the very low level of participation in the referendum noted by most independent observers, it was clearly inconceivable that voters would be able to express their opposition to such a question. This was an Ordinance which formalised a wish to end a difficult chapter of the country's recent past. The Human Rights Committee noted that the Ordinance under the Charter "promote[s] impunity and infringe[s] the right to an effective remedy. (Art. 2, 6, 7 and 14 of the Covenant)."⁵

⁵ Human Rights Committee, 91st Session, *Concluding Observations of the Committee on Human Rights on the Third Periodic Report of Algeria*, 12 December 2007, (CCPR/C/DZA/CO/3), para. 7.

The Committee against Torture has meanwhile brought "the attention of the State party to paragraph 5 of its general comment No. 2 (2007), in which it expressed the view that amnesties or other impediments which preclude or indicate unwillingness to provide prompt and fair prosecution and punishment of perpetrators of torture or ill-treatment violate the principle of non-derogability."⁶ We recall that Article 45 of the Ordinance in question states that "with regard to any member of the defence and security forces of the Republic, all accusations (...) any information or complaint must be declared inadmissible by the competent judicial authority."⁷

5. Is the State considering amending this legislation to enable Algerian citizens to have access to justice?

5. Sham Institutions

The points mentioned above are important, because the climate of fear was, and still is, a guarantee of impunity for perpetrators and sponsors of serious violations committed under the responsibility of the state. Human rights defenders see this regularly: victims of violations, in particular of the massacres, are afraid to testify. The main problem is that violations are not addressed at the institutional level; specifically, the justice system continues to operate under the control of the authorities, in particular the DRS. Furthermore, the Parliament is not fulfilling its basic function, which is to represent its citizens, while the NHRI has shown itself to be a defender of and spokesperson for the government, particularly concerning sensitive questions such as that of enforced disappearances.

Despite window-dressing reforms, the **justice system** remains subordinate to the Executive. The lawyer and former senator Mokrane Ait-Larbi, who recently published a book on the subject, put it very bluntly in an interview: "How can you talk about judicial independence when we know that the Department of Justice sent a memo to prosecutors asking them to strictly enforce the departmental guidelines, and that whoever 'grumbles' is punished because he is regarded as 'disruptive and rebellious.' How can we say that judges are independent. May I remind you that the memo in question is at the root of many abuses of justice. (...) There is progress on the modernization of the infrastructure, that's it. To say that judicial reform has been achieved is completely false. Again, it is not the texts which guarantee the independence of justice, but rather the genuine independence of the judges. Instead of deliberating, the judge hands down a decision taken in advance, condemning the accused solely on the basis of the police investigation, without evidence."⁸ (See also the chapter on justice).

The **Parliament** is also beholden to the Executive. It is an "echoing chamber for the government", which systematically adopts proposed laws or presidential decrees, without endorsing or preparing legislation itself. Debate is rare; even when it does take place no changes are made to proposed legislation. More gravely, "it can even be said that over the years, the handing down of Ordinances by the President of the Republic has become so unremarkable that it is now the rule instead of the exception."⁹ To illustrate this point we recall that the Algerian executive used a subterfuge to circumvent the recommendation by the Sub-Committee on Accreditation of National Institutions of Human Rights that the Algerian NHRI be aligned with the "Paris Principles", which state that a constitutional or legislative text shall govern the NHRI. The Algerian Council of Ministers, chaired by the Head of State, Mr Abdelaziz Bouteflika, met on 27 August 2009 to proceed with the adoption of a draft Ordinance on the CNCPDH. The presidential Ordinance, which did not change the previous

⁶ Committee against Torture, 40th session, *Concluding Observations of the Committee of Human Rights on the Third Periodic Report of Algeria*, 16 May 2008, (CAT/C/DZA/CO/3), para. 11.

⁷ Ordinance No. 06-01 of 28 Moharram 1427 (corresponding to 27 February 2006) relating to the implementation of the Charter for Peace and National Reconciliation.

⁸ *Entretien avec l'avocat et auteur du livre de "Entre le palais et la justice" (Between the palace and the justice system): On ne peut pas imaginer une indépendance de la justice dans un système pourri* (In French only - Interview with the lawyer and author of 'Between the palace and the justice system': "It is impossible to talk about an independent judiciary in a rotten system"), El Watan, 3 November 2009. <http://www.elwatan.com/On-ne-peut-pas-imaginer-une> (accessed 17 June 2010).

⁹ Nabil Benali, *L'usage de l'ordonnance se banalise: L'Exécutif a fini d'écraser le Parlement* (in French only - The use of Ordinances becomes commonplace: the Executive has completely crushed the Parliament), Debates, 27 July to 2 August 2005.

Decree, was published on 30 August in the Official Journal.¹⁰ It was followed by another Decree, also published on the same date in the Official Journal.¹¹

The rare attempts by some MPs to set up parliamentary commissions of inquiry have never led to the publication of findings and recommendations, partly due to the refusal of the Executive to be involved in the process, or because the results are not made public, for example in the case of the commission to investigate the dramatic events which followed the assassination of Massinissa Guermah by the National Gendarmerie in Kabylia on 18 April 2001. The murder provoked riots which lasted for months; more than 100 people were killed and thousands injured by security forces.¹²

The Algerian NHRI, the National Advisory Commission on the Promotion and Protection of Human Rights (CNCPPDH), is an institution whose primary mission is to channel the legitimate claims of victims of human rights violations so that they can be emptied of their substance and relativized or obscured. The Commission played a particularly pernicious role in the case of enforced disappearances. Attempts to deny the responsibility of the state for this mass crime are reflected in the repeatedly reiterated statement that "the State is responsible but not guilty." Having received a mandate to deal with the painful problem of enforced disappearances, the CNCPPDH's President, Farouk Ksentini, sought the cooperation of affected families: they were offered compensation provided they stopped all legal action. To mask the state's responsibility, he went even further: in early 2005, when the mechanism he was chairing established that the number of missing abducted by security forces stood at 6,146 people, he later stated that "at least 3,000 of the missing are people who joined the underground and subsequently died or are hiding outside the country."¹³ Even though the final report was presented to the President of the Republic in late March 2005, Mr Ksentini told the press that on 13 April 2005, he asked the DGSN services (Directorate General of National Security), i.e. the police, to hand over the photos of 3300 people buried in unidentified graves since 1992 so that they could be compared with those of the families of disappeared.¹⁴ Mr Ksentini is no longer publicising the steps taken to access such information. He has especially distinguished himself through his efforts to completely close the file, frustrating the efforts of the families of the disappeared and NGOs. For example, he vehemently contradicted the existence of secret detention centers, which were cited in a report by the U.S. State Department. Ksentini describes the report in the following manner: "The report in question is based on generalities and does not give names and facts that can be investigated or verified, and is therefore not credible. It is worthless."¹⁵

During the review of Algeria's periodic reports by the Human Rights Committee in October 2007 and the Committee against Torture in May 2008, the CNCPPDH failed to produce any documents or make any statements. It was only after the publication of the Human Rights Committee's Concluding Observations that Mr Ksentini challenged the experts' conclusions on national radio, saying: "there are no secret detention centres or torture in Algeria, neither for ordinary citizens nor for the terrorists." He described, in this context, the information reported by the Human Rights Committee to the UN in Geneva on the situation in Algeria as "fairy tales bordering on buffoonery."¹⁶ He further accused the UN Human Rights Committee of attempting to "undermine the reputation of Algeria" through these "suspicions". Addressing the UN position adopted at the time of the massacres during the 90s, Mr Ksentini added that the Committee "had in the past taken up the cause of terrorism against Algeria."¹⁷

¹⁰ Ordinance No. 09-04 of 27 August 2009 concerning the National Advisory Committee for the promotion and protection of human rights.

¹¹ Decree 09-263 of 30 August 2009 concerning the role, composition, mode of appointment and functioning of the members of the National Advisory Committee for the promotion and protection of human rights.

¹² Nabila Amir, *Aucune commission d'enquête parlementaire n'a abouti* (in French only - *No Parliamentary Inquiry Has Led Anywhere*), El Watan, 1 July 2010.

¹³ Salim Bey, *Farouk Ksentini: «Au moins 3.000 cas de faux disparus»* (In French only - *Farouk Ksentini: "There are at least 3,000 cases of fake disappearances"*), Le Quotidien d'Oran, 8 December 2005.

¹⁴ Nassima Oulebsir, *Elle avait été saisie en avril dernier pour qu'elle fournisse les photos des enterrés sous X, Me Ksentini : la DGSN ne nous a toujours pas répondu* (In French only - *The DGSN was asked in April to provide pictures of the people who were buried in unmarked graves. Mr. Ksentini: the DGSN has still not responded*), Le Jeune Independent, 29 June 2005.

¹⁵ T.M.A., *La question des droits de l'homme est une question centrale dans les priorités du gouvernement* (in French only - *Human rights are high on the government's list of priorities*), El Mudjahid, 20 March 2010.

¹⁶ Djamel B., *Farouk Ksentini: Il n'y a pas de prisons secrètes en Algérie* (In French only - *Farouk Ksentini: There are no secret prisons in Algeria*), Le Quotidien d'Oran, 4 November 2007.

¹⁷ Djamel B., *Farouk Ksentini: Il n'y a pas de prisons secrètes en Algérie* (In French only - *Farouk Ksentini: There are no secret prisons in Algeria*), Le Quotidien d'Oran, 4 November 2007.

As for the claims of families of disappeared persons, he said that "in the absence of records or testimony, it is now impossible to identify those responsible for disappearances during the national tragedy; consequently the state cannot be expected to begin lawsuits against people without any substantial evidence."¹⁸ Yet five years before, Mr Ksentini himself had been in touch with the police to ask for evidence. He says that "no country has managed to identify or try the perpetrators of disappearances, even though there have been some almost anecdotal attempts to do so (in Latin America)"¹⁹; thus dismissing the considerable efforts made in some countries to shed light on disappearances and prosecute those responsible.

For years, the families of the disappeared have gathered outside the headquarters of the NHRI in Algiers every Wednesday to demand the truth about the fate of their missing relatives, and to ask the justice system to establish who was responsible for these abductions. According to the press, Mr Ksentini banned such gatherings in the future, following the rally which took place on 23 June 2010.²⁰ This ban took effect on Wednesday 4 August 2010, the day that the weekly gathering of families of the disappeared was to take place outside the headquarters of the CNCPPDH. A large police presence prevented the families from assembling, and they were forcibly moved away.²¹

To date, the report on enforced disappearances that the CNCPPDH presented to the President of the Republic in March 2005 has not been made public. The International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) ruled in 2009 that the Algerian NHRI did not meet the Paris Principles and was demoted. As part of the process of reviewing compliance with the Paris Principles by the Accreditation Subcommittee, Alkarama submitted two reports to the ICC, one of which is published on its website.²²

6. Torture

Torture is still a common practice in police stations, DRS centers and prisons. Mr Mustapha Bouchachi, president of the Algerian League for the Defence of Human Rights (LADDH), explained the following at a press conference on 30 July 2008: "No investigations have ever been opened into the abuses denounced by victims before judges in an open court."²³ An inquiry should always take place when a victim claims to have been tortured or shows traces that may be the result of abuse. The victims themselves usually dare not complain because they fear retaliation at their trials. Mr Bouchachi said he received a dozen cases of torture in the space of two months, only one of which led to a complaint.

Larbi Ansal, a 31-year-old shoemaker, and **Noureddine Bouilouta**, aged 28, businessman, both of Laaricha, which is in Emir Abdelkader commune (Jijel wilaya), were arrested on 25 and 26 October 2009 respectively, by the DRS (Department of Intelligence and Security) and held incommunicado for 14 days in a villa adjoining the Jijel military headquarters, which houses the local branch of the DRS. Both men were savagely tortured and were accused of "belonging to a network of terrorist support groups", a claim that was probably based on information collected from another prisoner. On the fifth day of their detention in Jijel, they were transferred to the CTRI (Territorial Research and Investigation Centre) in Constantine, where they were also tortured and forced to sign a document

¹⁸ Moncef Wafi, *Dossier des disparus: Ksentini veut tourner la page* (In French only - *The Disappeared; Ksentini wants to turn the page*), Le Quotidien d'Oran, 20 March 2010.

¹⁹ APS, *Ksentini veut classer le dossier des disparus* (In French only - *Ksentini wants to shelve the cases of the Disappeared*), El Watan, 19 March 2010.

²⁰ El Khabar, 27 June 2010. See also: Mich'Al Association of Disappeared Children of Jijel, *Quand Ksentini endosse le rôle de flic* (In French only - *When Ksentini styles himself a cop*), 30 June 2010, http://www.algeria-watch.org/fr/mrv/mrvrap/michal_endosser_role.htm (accessed 17 July 2010).

²¹ Hacem Ouali, *Les autorités veulent en finir avec leurs rassemblements hebdomadaires : Les familles des disparus privés de sit-in* (In French Only - *The authorities want to do away with their weekly gatherings: Families of the Disappeared banned from staging sit-ins*), El Watan, 5 August 2010.

²² Alkarama, *The national institution for human rights in Algeria before the International Coordinating Committee of NHRIs*, 5 February 2009, http://en.alkarama.org/index.php?option=com_docman&task=cat_view&gid=181&Itemid=80. The second report is dated 10 November 2009 and is entitled: *The national institution for human rights after its demotion by the International Coordinating Committee of NHRIs*.

²³ Ali Yahia Abdenour and Mustapha Bouchachi sound the alarm: *On torture dans les prisons et les commissariats de police* (In French only - *People are being tortured in prisons and police stations*), El Watan, 31 July 2008, <http://www.elwatan.com/Ali-Yahia-Abdenour-et-Mustapha> (accessed 17 June 2010).

without being able to read it. They were transferred back to Jijel and brought before the public prosecutor on 9 November 2009 at the court of Taher, where they were ordered into custody.²⁴ Judged 6 months later, they were sentenced to three years in prison on the basis of confessions extracted under torture.

The press has occasionally reported on cases of torture, as in the following example which was made public by a member of parliament who intervened to support the victim. **Omar Imekraz**, aged 30, of Nador in the Tipaza wilaya, filed a complaint with the Blida military attorney against a local police officer, accusing him of torture. On 17 March 2009, he was summoned to the Gendarmerie headquarters. He went there and was detained for five hours, during which he was kicked and punched, including in the ear, forcing him to take 12 days sick leave. There was no follow-up to the complaint he filed on 30 March 2009 with the military prosecutor; on the contrary, the officer, head of a Gendarmerie section for research and investigation summoned him several times to the station to impress upon him that although he is "untouchable for now, he had better withdraw his complaint, or his father and his brothers would be imprisoned." The officer in question was contacted by the newspaper and denied having abused Mr Imekraz.²⁵

On 5 June 2010, another newspaper reported that **Nouridine Nadra**, 31, married without children, died while in police custody at the Central Commissariat of Saïda on 2 June 2010. He had been arrested the previous day after a scuffle with a motorist. "According to his brother, 'they beat Nouridine inside the station'; he said 'he heard loud, incessant screams.' This led him to inquire about the state of his brother. He was soon reassured when told that they were 'calming him'. An hour later, Nouridine was taken to hospital where he received two injections of sedative before he was returned to jail. His brother left the station and returned the next day with clothes and coffee. It was 8:00am. When he arrived, they 'told him to come back later.' An hour later, Kadirou went back and that's when they announced the death of his brother Nouridine." The family took pictures after the autopsy and said that he died from the beating in the police station. They called for an investigation. "Following these events, one of the station's managers denied all the allegations made by the brother, and declared that an investigation had been opened to get the bottom of this tragic incident."²⁶

Beatings and ill treatment in prisons appear to be commonplace. In our submission to the Committee against Torture in April 2008²⁷, we reported that on 18 February of that year nearly **80 inmates** of El Harrach prison (Algiers) had been tied up, handcuffed, stripped and beaten by guards with iron bars and batons. The prison director witnessed these beatings. To our knowledge, neither the guards nor the director have been disciplined for these acts.

Abderrahmane Mehalli, detained in El Harrach prison, received his first visit from his family on 14 June 2008; they were shocked when they saw him. He had been severely tortured. He had a head wound and was totally apathetic; his eyes were empty. He reported that during his detention, agents of the Department for Security and Intelligence (DRS) tortured a group of prisoners after stripping them naked and sexually abusing them. He told his family that this went on for months.²⁸

On 10 November 2008, the Ghardaia section of the LADDH announced that it had requested an investigation into the torture of **Mohamed Baba Nedjar** while he was being held in Ghardaia prison. The 26-year-old was accused of killing an activist from the FFS party, something he categorically

²⁴ Algeria-Watch and the Mich'al Association of Disappeared Children of Jijel, *Jijel en 2009: Le cauchemar de la disparition forcée ressurgit* (In French only - *Jijel 2009: The nightmare of enforced disappearances resurfaces*), 20 December 2009, http://www.algeria-watch.org/fr/aw/cauchemar_disparition.htm (accessed 17 June 2010).

²⁵ Nadjia Bouaricha, *Le député Mohamed Khendek dénonce un cas de torture* (In French only - *MP Mohamed Khendek denounces a case of torture*), El Watan, 14 June 2009, <http://www.elwatan.com/Le-depute-Mohamed-Khendek-denonce> (accessed 17 June 2010).

²⁶ B. El Merini, *Ses voisins bloquent la route, Mort suspecte d'un gardé à vue au commissariat central à Saïda* (In French only - *His Neighbors block the road, Suspicious Death of a Suspect Held in Custody at Sidon Police Headquarters*), The voice of Oran, 5 June 2010.

²⁷ Alkarama report, *Torture remains a common practice in Algeria*, April 2008, http://en.alkarama.org/index.php?option=com_docman&task=cat_view&gid=180&Itemid=71.

²⁸ Collectif des familles de disparu(e)s, *La torture se pratique jusque dans les prisons d'Alger: Abderrahmane Mehalli victime de traitements cruels et inhumains à la prison d'El Harrach*, (In French only - *Torture is practiced in Algiers prisons: Abderrahmane Mehalli Victim of Cruel and Inhuman Treatment in El Harrach prison*), 11 July 2008, http://www.algerie-disparus.org/CFDA/index.php?option=com_content&task=view&id=144&Itemid=180 (accessed 18 June 2010).

denies. Arrested on 27 October 2005, he was sentenced to death in June 2006 in an initial, unfair, trial. Transferred to Berrouaghia prison (in Medea), he was retried after an appeal in May 2009 and sentenced to life imprisonment in a trial that was equally unfair. He reported that he was repeatedly tortured in prison. On 10 June 2010, LADDH's Ghardaia section issued a statement in which it reported its concerns at the transfer of Mr Baba Nedjar from Berrouaghia prison to an unknown destination. It was only after further research that the family found out that he was in "Babar" prison, in Khenchela. They assumed that the transfer was in connection with the possible visit of a delegation from the International Committee of the Red Cross to the Berrouaghia prison. As mentioned in the statement, Mr Baba Nedjar was abused in prison. When a prison official said to him, "Die, your fate does not interest us!" after hearing his complaints, Mohamed Babanadjar decided to begin an indefinite hunger strike. In response, he was locked in an isolation cell, with his wrists chained together, despite his ongoing hunger strike.²⁹

Alkarama continues to follow the case of **Mounir Hammouche's** death in custody. He was kidnapped on 23 December 2006 in Ain Taghrout in the wilaya of Bordj Bou Arreridj by the DRS. Six days later, he was pronounced dead. He had numerous signs of torture, including a wound to the head and bruises on his hands and feet. All the attempts by the family to file a criminal complaint against the DRS were unsuccessful. The General-Prosecutor of Constantine refused to hand over a copy of the autopsy report, claiming that since an inquiry had been opened, the results would be communicated in due course. In its Concluding Observations adopted on 13 May 2008, the Committee against Torture referred to Mounir Hammouche's death in custody. So far, the family has received no information about any "ongoing" investigation, nor has it been given a copy of the autopsy report.

Examples of deaths from beatings in police stations or DRS barracks are not uncommon. Sadly, we can safely assume that most cases do not reach the public sphere.

6. What does the State party intend to do to put an end to torture and mistreatment of detainees in police custody, particularly on DRS premises? What do the authorities do about these deaths?

7. What were the results of the investigation into the death of Mounir Hammouche? Why do the authorities refuse to disclose anything to his family?

7. Arbitrary and Incommunicado Detention

Whilst incommunicado detention was systematic in the past, it is rarer today. It nevertheless continues to be practiced during the period of police custody in cases of suspected terrorist activity. Detainees can be held for 12 days, as per the text of an anti-terrorism law passed in September 1992. While the law provides that those in custody must be allowed to contact their families, receive visits and be examined by a doctor of their choice if they request it (Code of Criminal Procedure - 51 bis1 CPC), they are in fact held incommunicado in DRS-controlled centers. This means that the premises are not inspected by the public prosecutor, as recommended in Article 52 of the CPC. The interrogations are carried out by DRS agents, all of whom report to the Ministry of Defense and are therefore considered judicial police officers. Defendants' most basic rights are not respected; threats and other abuse are common. Since these centers are located in military barracks, they are not considered legally available to the prosecution or the ICRC. They do not hold records which can be viewed by prosecutors.

In a debate held on 18 March 2010 by the newspaper El Mujahid about a report by the U.S. State Department on human rights in Algeria, the President of the NHRI, Mr Farouk Ksentini, strongly contradicted the allegations in this document concerning incommunicado detention and laid down a challenge: "'Give us names so we can verify these claims, intervene and conduct investigations' – he then said that the report is 'based on rough estimates'"³⁰. Mr Ksentini must be aware of the work of human rights NGOs, who have provided or published hundreds of names of victims. Didn't the

²⁹ LADDH: Algerian League for the Defence of Human Rights, Ghardaia branch, *URGENT!!*, 10 June 2010, http://www.algeria-watch.org/fr/mrv/mrvtort/comite_baba_nadjar/greve_faim.htm (accessed 29 June 2010).

³⁰ Salim Koudil, *Ksentini à propos du rapport US sur les droits de l'homme en Algérie: «Il n'est pas crédible»* (In French only - *Ksentini, on the U.S. Report on Human Rights in Algeria: «It is not credible»*), *Liberté*, 20 March 2010.

thousands of victims of enforced disappearances end up disappearing during their incommunicado detention?

As for Merouane Azzi, head of the Supreme Court's Unit for National Reconciliation, who attended the debate, he said, "concerning the long pretrial detentions mentioned in the U.S. report, (...) 'if it were true, we would have had wind of it; we've never had any evidence confirming these claims, which are totally unfounded.' These statements got a reaction from a lawyer present in the room, Mr Chorfi, who denounced the problems of police custody, highlighting the fact that prison registers are falsified. According to him, if the American accusations are to be disproved, 'the prosecution must go and check prison records', or advocate for more investment in prisons by allowing, for example, the use of cameras."³¹

8. Does the prosecutor have access to DRS detention centers? The authorities indicate that the Red Cross can visit premises where detainees are held at any time. Can its members also access the DRS centers? Are inmates in these facilities registered on a system which is numbered and initialled by a controlling judicial authority?

We previously discussed the case of **Malik Medjnoun** and **Abdelhakim Chenoui**, both of whom have been in prison since 2000 after being accused of complicity in the Lounes Matoub's assassination on 25 June 1998. After his arrest on 28 September 1999, Malik Medjnoun was held incommunicado and severely tortured. After an urgent appeal by the United Nations Working Group on Enforced and Involuntary Disappearances in April 2000, the Algerian authorities decided to present him before the investigating judge of Tizi-Ouzou on 2 May 2000. It was at this point that, for the first time, he was confronted with the accusation of complicity in the assassination of Lounes Matoub.

In protest against the Algerian authorities' obvious reluctance to bring his case to trial, Malik Medjnoun began a hunger strike on 25 February 2008. On 26 February 2008, the Prosecutor-General of the Court of Tizi-Ouzou, Mr Laziz Tayeb, went to the civil prison, accompanied by the presiding judge (who is also chairman of the criminal court), to ask him to stop his strike.

The judge sought to convince Malik Medjnoun that due to the "sensitivity" of the case, neither he nor the President of the Court had the authority to hear the case in a criminal court. Nevertheless, he said he would try to intervene with the "competent authorities".

Faced with this denial of justice, Malik began a new hunger strike on 31 January 2009. On 1 February 2009, an attorney visited him in jail to convince him to end his hunger strike, promising that he would be brought to trial after the presidential elections in April 2009.

On 24 June 2010, he began another hunger strike, which will last until a trial date has been set.³² He was again visited on 20 July 2010 by the President of the Court of Tizi-Ouzou and the Deputy Prosecutor-General, together with the prison director, who once again sought to persuade him to stop his hunger strike.³³

To date, the Algerian authorities have refused to implement the findings of the Human Rights Committee of 14 July 2006 concerning Mr Medjnoun. The Committee had urged the Algerian authorities to "bring[ing] Malik Medjnoune immediately before a judge to answer the charges against him or to release him, conduct[ing] a full and thorough investigation into the incommunicado

³¹ Salim Koudil, *Ksentini à propos du rapport US sur les droits de l'homme en Algérie: « Il n'est pas crédible »* (In French only - *Ksentini, on the U.S. Report on Human Rights in Algeria: « It is not credible »*), Liberté, 20 March 2010.

³² Alkarama press release, *Algeria: After 12 Years' Imprisonment, Malik Medjnoun Begins Hunger Strike*, 24 June 2010, http://en.alkarama.org/index.php?option=com_content&view=article&id=546:algeria-after-12-years-imprisonment-malik-medjnoun-begins-hunger-strike&catid=18:communiqués&Itemid=78, (accessed 26 August 2010).

³³ Alkarama press release, *Malik Medjnoun, en grève de la faim depuis un mois reçoit la visite de l'adjoint du Procureur général et du président de la Cour* (Currently in French only - *Medjnoun Malik, on hunger strike for a month, receives a visit from the Deputy Attorney General and the President of the Court*), 24 July 2010, http://fr.alkarama.org/indexa.php?option=com_content&view=article&id=796

detention and treatment suffered by Malik Medjnoune since 28 September 1999, and initiate[ing] criminal proceedings against the persons alleged to be responsible for those violations."³⁴

During the procedure, the Algerian government informed the Human Rights Committee by letter dated 28 December 2004 "the case should be scheduled for trial in the Tizi-Ouzou criminal court in the very near future."

Despite these commitments by the Algerian government and the opinions of the Committee, Mr Medjnoun is still awaiting trial. There is no precedent to date in Algeria for nearly 11 years of preventive detention.

9. Why have Malik Medjnoun and Abdelhakim Chenoui still not been tried?

10. Does the State party intend to implement the recommendations of the Human Rights Committee concerning Malik Medjnoun, and to comply with its domestic law and international obligations?

Adel M. Saker, born in 1977, is an example of the persecution that people can suffer over the course of many years at the hands of the DRS. Arrested for the first time in 1994, while still a minor, he was held for three years before being released. He was rearrested in 1998 and detained incommunicado on DRS premises for one year, and again in 2001, under the same conditions and for the same duration. Given the ongoing persecution by local DRS, he moved to Syria in 2003 to complete his studies in Arabic literature. After a year and a half of problem-free residence in this country, during which he pursued his studies normally, he was arrested in January 2005 by the Syrian intelligence services, who claimed to be acting on the request of the Algerian security services. On 26 February 2005, he returned to Algeria, where he was arrested by the DRS at the Houari Boumediene airport, in Algiers. He was held incommunicado for a full year, during which he was severely tortured for several months; in particular, electricity was used on him, as was the cloth technique. He was also subjected to serious sexual abuse. His parents were unable to get news of him throughout the year, despite many attempts to do so through various channels. On 25 February 2006, the DRS presented him to the prosecutor in Algiers on charges of "belonging to a terrorist network", and in particular of being "the intermediary between Al Qaeda and the Algerian GSPC." This accusation was probably used to retrospectively justify his long detention in solitary confinement - he was released the same day. The persecution has not let up, however: local police regularly summon and detain him for hours without telling him why he is being held. On 26 May 2008, he was again ordered to the security headquarters of Daira Tamalous by a police officer, who sent the summons to his home through an agent of public order (APO). On 12 April 2009, he surfaced in Skikda prison, after again being held incommunicado and tortured by the Department of Intelligence and Security (DRS). Alkarama submitted a communication to the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on Torture on 30 June 2008. He was brought before a judge and charged with a terrorism-related case. He is still being held to this day.

11. On what legal basis has Mr Saker been harried for over 16 years? Why has he been held incommunicado on several occasions for extended periods, the latest of which has lasted 11 months? What are the charges against him? Has an investigation been opened in response to allegations of torture?

The Slovak Ministry of Interior extradited **Mustapha Labsi**, 39, on 19 April 2010 to Algeria, an action that the Council of Europe strongly condemned because he risked being tortured on his return.³⁵ He had been sentenced in absentia to life imprisonment for terrorist activities in Algeria. Upon his arrival in Algeria, he was held incommunicado for 14 days before being incarcerated in the El Harrach prison of Algiers.

³⁴ Human Rights Committee, *Views of the Human Rights Committee concerning Communication No. 1297/2004*, 9 August 2006, (CCPR/C/87/D/1297/2004), para. 10.

³⁵ Parliamentary Assembly of the Council of Europe, *Disregard by Slovakia of binding interim measures ordered by the Strasbourg Court 'unacceptable'*, 29 April 2010, http://assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=5505&L=2, (accessed 6 August 2010).

7.2 Former Guantanamo detainees

All Algerian ex-Guantanamo detainees who are repatriated to Algeria are indicted on arrival as suspected of belonging to a terrorist organization operating abroad. Detained without exception, even though they have been cleared by American justice, those returning from Guantanamo are initially placed in custody before being brought before a judge – this inevitably leads to judicial supervision. This period may last longer than a year. **Abdelli Faghoul** and **Terari Mohamed**, accused of belonging to a terrorist group operating abroad, were acquitted on 22 November 2009 by the Algiers criminal court. After their release from Guantanamo, they were handed over to the the Algerian authorities on 15 August 2008; the Prosecutor-General had requested a sentence of 20 years in prison.³⁶

12. How many inmates from the U.S. camp in Guantanamo have been repatriated to Algeria? How many of them are currently under judicial review? Have trials taken place? What is the fate of inmates exonerated by the U.S. justice system who are still held at Guantanamo Bay?

Ex-prisoners who do not wish to be sent back from Guantanamo to their country for fear of being tortured have been repatriated regardless. The American NGO Center for Constitutional Rights said that **Abdul Aziz Naji**, who was returned to Algeria against his will on 19 July 2010, has disappeared: "Mr Naji disappeared after his return to Algeria and we believe he is being secretly detained by Algerian security forces."³⁷ Mr Farouk Ksentini, president of the Algerian NHRI, did not seem unduly concerned, as evidenced by his comments: "This disappearance may be the work of the prisoner himself, since he had hoped not to return to Algeria. It is also possible that the Algerian security services are holding him for interrogation purposes. This is a perfectly normal procedure in the fight against terrorism."³⁸ He said that "by law, the detention must not exceed twelve days." Mr Ksentini seems to have forgotten that during this extremely long period of custody, the detainee should not be held incommunicado. Naji was finally released after more than a week of incommunicado detention.

13. Why are ex-Guantanamo detainees held incommunicado without being able to contact their family or a lawyer for a period longer than the (already excessive) legal limit of 12 days?

7.3 Former Internees in the South

An old issue which has so far never been addressed by the government is that of thousands of people who were arbitrarily detained upon the cancellation of the results of parliamentary elections and the interruption of the democratic process in January 1992. They were placed in administrative detention in internment camps in southern Algeria (officially called security centers), sometimes for years. Arrested without judicial warrants, they were released without legal process. It was not until November 1995 that the camps at In M'guel, Reggane, Oued Namous, In Salah, El Menéa, Bordj Omar Idris, Tsabit, Tiberghamine, Bordj El Homr and Ouargla were officially closed. The authorities put the figure of internees at 10,000; human rights NGOs believe that 18 000-20 000 people were affected.³⁹ Among these men were executives of the FIS, which had not yet been banned when the camps opened, including local councillors and MPs from the first round of elections, which were rendered void by the army. The camps were opened following Decree 92-11 which declared a state of emergency on 9 February 1992 in Article 5. The inmates, regarded as a threat to national security, were not tried and had no legal opportunity to challenge the validity of their detention, even though the decree provides that they should have had an opportunity to do so. Simply put, it was impossible in the circumstances. Inmates were not compensated upon their release. Worse, some of them were abducted by the security services and have disappeared; others continued to be pursued, some were placed under house arrest and others were victims of extrajudicial executions. Former inmates who

³⁶ APS, *Justice : 2 anciens prisonniers de Guantanamo acquittés* (In French only - *Justice: 2 former Guantanamo prisoners acquitted*), El Watan, 23 November 2009.

³⁷ Center for Constitutional Rights, *Lawyers Concerned Over Fate of Guantanamo Detainee Returned To Algeria*, 21 July 2010, <http://ccrjustice.org/newsroom/press-releases/lawyers-concerned-over-fate-of-guantanamo-detainee-returned-algeria> (accessed 23 July 2010).

³⁸ LamiaTagzout, *Un prisonnier algérien transféré de Guantanamo disparaît en Algérie* (In French only – *Former Guantanamo detainee returned to Algeria disappears*), El Watan, 23 July 2010.

³⁹ National Consultative Commission for the Protection and Promotion of Human Rights (CNCPPDH) puts the figure at 18,000. Salah-Eddine K. *Les internés des camps du Sud veulent «leurs droits»*, (In French only - *The internees of the Southern Camps demand "their rights"*), Le Quotidien d'Oran, 9 August 2009.

had been officials or employees of public enterprises were not reinstated to their jobs. Many of them simply could not explain the months or years of absence, since the administration does not acknowledge their detention. Many former internees currently have cancer, particularly tumors of the thyroid, because at least two camps were set up on contaminated sites, where the French army had conducted nuclear tests.⁴⁰ Some have died in the meantime.

To date no complaints have been laid and the Committee for the Defence of the Former Internees of Security Centres (CISC) has asked that this category of victims be taken into account in the provisions of the Charter for Peace and Reconciliation. The Committee asked "that the records held by the wilayas be reopened and that these former internees receive certificates allowing them to claim their rights."⁴¹ It also calls for an end to the ban on former security centre detainees from leaving the country, which is still in force today.

14. How many people were held in administrative security centers? How does the State party acknowledge the harm suffered due to these detentions, some of which lasted for four years? Why has no compensation been legally provided for? What are the reasons for the harassment suffered by this group of people (travel ban, non-issuance of passport, etc)?

8. The Justice System

As part of the reform of the Algerian justice system, dozens of legal texts have been revised, judges have been trained and institutions have been revamped. All of this simply leads many observers to say that the problem with the Algerian justice system is not in the texts, but rather that the justice system is completely subordinate to the Executive. This reality is particularly evident in cases related to "terrorism" and corruption. A former judge said: "Even in the absence of firm guidelines, the judge will seek to please his chancellorship. It's self-censorship. Furthermore, no judge will tell you that he has been given instructions. Considering the putative importance of these cases, the magistrate simply does not play its role. These highly scrutinised cases have political connotations; once politics come into it, nothing is real."⁴² Mr Ait Larbi, quoted above, mentions that "prosecutors cannot act against the advice of their superiors, as illustrated by the case of attorney Ali Chemlal: after filing charges against certain 'well-placed' individuals, against the will of the Prosecutor-General, he found himself suspended and disbarred by the Magistrates' Superior Council. Despite a decision by the State Council rescinding his suspension in 2002, the Justice Department continues to refuse to reinstate him."⁴³

We also wish to present the Committee with two very unusual cases that illustrate the justice system's blatant dysfunctions, highlighting its dependence on the Executive. These cases are emblematic in many ways. They clearly illustrate how cases involving members of armed groups accused of committing serious crimes are treated exclusively as security cases, as well as emphasising the complete lack of transparency that characterizes the application of amnesty laws to people who had previously been classed as the most dangerous terrorists of the 90s and 2000s. Transparent and fair trials would shed light on the gray areas that shroud many bombings and assassinations, especially considering that victims or their relatives as well as human rights defenders strongly suspect the DRS of being involved in some of these crimes. Based on the highly publicized cases of these two men (outlined below), one can ask legitimate questions about how independent the Algerian justice system is from the Executive.

The first case involves **Hassan Hattab**, who supposedly created the GSPC (Salafist Group for Preaching and Combat) in 1998 after being the "emir" of Zone 2 (Kabylie and the eastern part of the capital) within the GIA (Armed Islamic Groups). In the 2000s, he was reported dead, captured or repented. It took an official statement at a press conference from the Minister of the Interior, Yazid

⁴⁰ Algeria-Watch, *Le drame des ex-internés des camps du Sud*, (In French only - *The tragedy of the former internees of the Southern Camps*), 26 July 2010, http://www.algeria-watch.org/fr/mrv/internes/ex_internes/ex_internes.htm (accessed 6 August 2010).

⁴¹ Salah-Eddine K. *Les internés des camps du Sud veulent «leurs droits»*, (In French only - *The internees of the Southern Camps demand "their rights"*), Le Quotidien d'Oran, 9 August 2009.

⁴² Nissa Hammadi, *Comment la justice traite la corruption* (In French only - *How the justice system treats corruption*), Liberté, 1 July 2010.

⁴³ Nissa Hammadi, *L'avocat Mokrane Ait Larbi à Liberté: « Le parquet dépend du pouvoir politique »*, (In French only - *Mokrane Ait Larbi speaks with Liberté: "The prosecution depends on the authorities"*), Liberté, 1 July 2010.

Zerhouni, on 6 October 2007, to reveal that Hassan Hattab had surrendered to the authorities on 22 September 2007. Theoretically, his period of police custody was to end on 4 October 2007, when he was to be brought before a judge.

Despite the fact that he was being held by the Algerian authorities, the criminal court of Algiers tried him in absentia on 15 October 2007; this procedure is normally used in cases where the accused is a fugitive. The court scheduled Hassan Hattab's hearing for November 4⁴⁴. But on 4 November, he was not presented to the court and the judge ruled that he "is on the run and should be tried in absentia, unless evidence of his surrender can be provided to the competent bodies."⁴⁵ Zerhouni, the interior minister, stated that "the Hattab file has not yet reached the court because his case is still under preliminary investigation by the security services."⁴⁶ He is therefore being held incommunicado. On the first day of the trial, the public prosecutor stated that Mr Hattab was not being held in prison.⁴⁷ In conclusion, therefore, Zerhouni has officially announced Mr Hattab's surrender, but the justice system does not officially know where he is; the prosecutor-general is unable to present him to the hearing set by the President of the criminal court.

On 25 November 2007, Mr Hattab was sentenced to death by the tribunal at Tizi-Ouzou, still in absentia, in connection with another lawsuit against him⁴⁸; one month later, the press announced that he was to be presented for judgement. Depending on the results of his examination, the judge was to decide his fate, or order the termination of the lawsuit.⁴⁹ But in June 2008, Mr Hattab's whereabouts remained unclear. When asked about Hassan Hattab, Felioune Mokhtar, the General Director of the Corrections and Rehabilitation Administration, stated that "he is not among the 59,000 inmates held in Algerian prisons."⁵⁰

Adding to the inconsistency, on 21 August 2008 the Algerian press reported that the previous day, Hassan Hattab had addressed a "call to stop fighting"⁵¹ to members of the GSPC. On 1 December 2008, other reports announced that a new trial for Hattab and others accused of "terrorism" had been set for December 16.⁵² Those who had been accused of 'terrorism' were tried that day in Algiers' Criminal Court; but to the surprise of many, Hassan Hattab did not figure on the list of defendants to appear in court. When questioned by reporters about this on 18 February 2009, Mr Zerhouni, the Interior Minister, explained that Mr Hattab had a "special status".⁵³ However, his official "disappearance" did not prevent the former head of the GSPC from appealing to fighters to lay down their arms and engage with the national reconciliation policy on the eve of the presidential elections in

⁴⁴ Mounir Abi, *Il est considéré comme étant «en fuite», La justice réclame Hassan Hattab*, (He is considered a fugitive ; the court calls for Hassan Hattab), *Le Jour d'Algérie*, 21 October 2007.

⁴⁵ Hassan Moali, *Affaire Hattab. Le grand cafouillage*, (In French only - *The Hattab case: What a mess*), *El Watan*, 5 November 2007

⁴⁶ Aït Challal Mouloud, *Le ministre de l'Intérieur révèle que l'ex-chef du GSPC est chez les services de sécurité ; une détention hors procédure devrait rendre impossible un procès* (In French only - *Minister of the Interior reveals that former leader of the GSPC is with the security services; An unorthodox detention could make a trial impossible*, *Le Jeune Independent*, 11 November 2007.

⁴⁷ Aït Challal Mouloud, *Le ministre de l'Intérieur révèle que l'ex-chef du GSPC est chez les services de sécurité ; une détention hors procédure devrait rendre impossible un procès* (In French only - *Minister of the Interior reveals that former leader of the GSPC is with the security services; An unorthodox detention could make a trial impossible*, *Le Jeune Independent*, 11 November 2007.

⁴⁸ Ahcène Tahraoui, *Peine capitale pour Hattab et Mohamed Bilam* (In French only - *Death penalty for Mohamed Hattab and Mohamed Bilam*), *El Watan*, 26 November 2007.

⁴⁹ H. Yes, *Fin de l'interrogatoire de Hassan Hattab*, (In French only - *Hassan Hattab's interrogation ends*), *El Khabar*, 25 December 2007.

⁵⁰ T.H., *Hassan Hattab, Un terroriste qui a «quelques rendez-vous avec la justice»*, (In French only - *Hassan Hattab, a terrorist who has "a few appointments with the law"*), *Le Soir d'Algerie*, 21 August 2008.

⁵¹ T.H., *Hassan Hattab, Un terroriste qui a «quelques rendez-vous avec la justice»*, (In French only - *Hassan Hattab, a terrorist who has "a few appointments with the law"*), *Le Soir d'Algerie*, 21 August 2008.

⁵² Fouad Irnatene, *Hattab sera-t-il à la barre*, (In French only - *Will Hattab stand trial?*), *L'Expression*, 1 December 2008.

⁵³ MAO, *Il est «repenti» en même temps, jugé par contumace, Le statut intrigant de Hassan Hattab* (In French only - *He has "repented", but at the same time, he is tried in absentia. The intriguing status of Hassan Hattab*), *El Watan*, 5 May 2009.

April 2009.⁵⁴ Nor did it stop him from giving an exclusive interview to a DRS-aligned national newspaper.⁵⁵

It should also be noted that he surrendered to authorities after the deadline specified in the application of the Charter for Peace and National Reconciliation proclaimed in February 2006 – the deadline for surrender having been set at six months. Mr Mustapha Bouchachi, a lawyer, is convinced that "there was a 'political deal' between Hattab and the authorities." And he believes that "if so, Algerians must be told. Otherwise he must appear before the courts"⁵⁶ just like any other citizen accused of a crime. Mr Ksentini, President of the Algerian NHRI explicitly confirmed the existence of an agreement and said "he is unaware of the nature of the deal involving the state and Hattab," but considers that "nevertheless, the state must meet its commitments to that person."⁵⁷ Moreover, he believes that despite two months having passed since Hattab's surrender, during which he has been held in secret without being brought before a judge, "there is no anomaly in the fact that the former head of the GSPC is in the hands of security services and not those of the justice system. There's no point trying to get ahead of ourselves; the role of the justice system is clear: it must enforce the law, and the police must investigate. There is therefore no overlap between the functions. In my opinion, we must allow the security services to continue with their interrogation and the investigation, after which the justice system will take over to finally decide on Hattab's fate, taking into account the fact that he handed himself in."⁵⁸

The second case concerns **Amari Saifi**, alias Abu Haidara, alias Abderrezak El Para, former Special Forces paratrooper who supposedly deserted his unit to join the GIA in 1992. In late 1998, he is said to have joined the GSPC, which had been founded by people who left the GIA (including its leader, Hassan Hattab). He subsequently assumed the leadership of "Zone 5" in 1999. Most notably, he is accused of having led an attack against a military convoy in the Batna region which killed 43 people, including members of the Special Forces. His main feat, however, was the kidnapping of 32 European tourists in March 2003. After receiving a ransom from the Germans, he is alleged to have fled to Chad, where he was captured with some of his men by the Movement for Democracy and Justice in Chad (MDJT), a Chadian armed opposition group. He and his men were handed over to the Libyan government, which in turn delivered them to the Algerian authorities on 27 October 2004. Since then, all those concerned have disappeared. On 25 June 2005, Amari Saifi was tried in absentia by the criminal court of Algiers and sentenced to life imprisonment for "establishing an armed terrorist group". All this while he was under the authority of the State; absurdly, the justice system deemed him a fugitive.

On 18 March 2007, the same Algiers criminal court tried him again, and again it considered his case in absentia. This was justified by arguing that "the judicial proceedings for this case began before 'El Para' was handed over to the Algerian authorities; therefore, he was considered a fugitive."⁵⁹ This shows that the criminal court clearly recognized that Amar Saifi was being held by the authorities, but it justified this conviction in absentia without any legal backing. The trial, which was once again postponed to the May-June 2007 criminal session, did not take place then either. Rescheduled for 24 March 2008, he was to be tried for "membership of a terrorist group and premeditated murder," under Article 87-bis, paragraphs 1, 2, 4 and 5 of the Penal Code.⁶⁰ He has not been tried to this day - neither on that date, nor on 13 July 2008, yet another rescheduled hearing. Even though nobody knows where he being is held (if indeed he is being detained!), he still managed to launch a call to

⁵⁴ Mokrane Ait Ouarabi, *Il appelle les terroristes à déposer les armes, Hassan Hattab, un ex-chef sanguinaire dans la peau d'un « réconciliateur »* (In French only - *He calls for the terrorists to lay down their arms; Hassan Hattab, a former bloodthirsty leader in the guise of "peacemaker"*), El Watan, 11 February 2009.

⁵⁵ Mustafa Ferhat / Zineb, *Hassan Hattab à Echorouk : « Il n'y a pas de Qaida en Algérie »*, (In French only - *Hassan Hattab speaks to Echorouk: "There is no Al-Qaeda in Algeria"*), Echorouk, 6 July 2009.

⁵⁶ MAO, *Il est « repenté » en même temps, jugé par contumace, Le statut intrigant de Hassan Hattab* (In French only - *He has "repented", but at the same time, he is tried in absentia. The intriguing status of Hassan Hattab*), El Watan, 5 May 2009.

⁵⁷ Nadjia Bouaricha, *Farouk Ksentini estime que la justice doit prendre en compte son statut de repenté, « L'Etat doit respecter son deal avec Hattab »*, (In French only - *Farouk Ksentini believes that the justice system must take into account the fact that he has repented, "The state must respect its deal with Hattab"*), El Watan, 20 November 2007.

⁵⁸ Nadjia Bouaricha, *Farouk Ksentini estime que la justice doit prendre en compte son statut de repenté, « L'Etat doit respecter son deal avec Hattab »*, (In French only - *Farouk Ksentini believes that the justice system must take into account the fact that he has repented, "The state must respect its deal with Hattab"*), El Watan, 20 November 2007.

⁵⁹ Abi, *«El Para» sera jugé par contumace*, (In French only - *"El Para" will be tried in absentia*), Le Jour d'Algérie, 1 April 2007.

⁶⁰ Mebarek Bachir, *Le procès d'El Para reporté* (In French only - *El Para's trial postponed*), El Watan, 26 March 2008.

members of armed groups to surrender in the context of the policy of national reconciliation before the presidential elections of April 2009, something the press eagerly reported on. No one actually saw him; the only evidence of this announcement's authenticity is a document signed on 31 January 2009 which is apparently in his handwriting.⁶¹ The judicial masquerade continues: on 21 June 2010, the Batna Criminal Court tried and convicted him in absentia for an attack on a military convoy in March 2003, which claimed two victims. In November 2009, Zaghmati Belkacem, Prosecutor-General at the Court of Algiers, noted that El Para was not in any of Algiers' prisons.⁶²

15. The Algerian authorities have admitted that they are holding these two men, but the highest judicial authorities do not know where they are; they are unable to bring them before a court. Why can the prosecution of the various courts before which these men are to stand trial not bring them to be tried?

16. The Ordinance for the application of the Charter provided for an amnesty of 6 months from the day of its issuance to members of armed groups to surrender to the authorities. What of those who handed themselves in after the legal deadline?

17. Is there a time limit to the provision in Article 45 stating that any complaints against members of the security forces is inadmissible, and if so, what is that period? How many complaints of torture have been filed since the enactment of this Ordinance and what steps have been taken concerning any such complaints?

9. Groups for Self-Defense, Patriots and Communal Guards

Another shadowy topic which the authorities avoid talking about concerns the government-backed "militias" that were established within the framework of the fight against terrorism in 1993. It was only in 1997 that a Decree conferred legal legitimacy upon these groups for self-defense (GSD), as they are officially designated.⁶³ Article 5 of the Decree provides that "the authorization to create groups for self-defense is issued by the competent Wali, upon request of local citizens, and is subject to approval from the security services." Article 6 states that the Ministers of Defense and Interior determine the terms of reference for the procedures for intervention and oversight of the GSDs. Section 7 provides that the daïra chief exercises overall supervision of the GSDs under the authority of the Wali and "coordinates with the relevant local police and administrative authorities." Article 8 stipulates that "weapons are to be distributed to the GSDs by the relevant public services." And article 9 sets out that in case of necessity, the remit of GSDs may "include defensive and retaliatory actions."

The authorities have never revealed the exact number of militiamen. Some estimates indicate that there are between 150,000 and 200,000 members, which is the size of the national army. Others give a much higher figure: "Since 1994, more than 500,000 citizens have been armed, to which can be added more than 80,000 Communal Guards."⁶⁴ In October 2001, the authorities continued to arm civilians in the Chlef, Ain Defla and Batna regions. The press reported in March 2010 that the disarmament of GSDs was under way in areas that have not had any trouble for years.⁶⁵ Numbers may still reach 25,000 throughout the country⁶⁶, but none of these figures have been confirmed.

The role of the militias, who were known as "Patriots", was multifaceted: while some mainly protected their villages from the incursions of armed groups, others carried out the more offensive tasks of tracking down suspected terrorists, not only in the bush but sometimes also in villages and even in city suburbs, with or without the army. Some militias are run by local potentates, appointed by the

⁶¹ *La déclaration d'El Para* (In French only - *The declaration of El Para*), Algérienews, 9 May 2009, http://www.djazairnews.info/pdf_fr.pdf (accessed 6 August 2010).

⁶² MAO, *Condamné une énième fois par contumace : Où est passé Abderrazak El Para ?*, (In French only - *Sentenced in absentia for the umpteenth time: Where is Abderrazak El Para?*), El Watan, 24 June 2010.

⁶³ Executive Decree 97-04 of 4 January 1997 establishing the conditions for exercise of self-defense in an organized setting.

⁶⁴ Ait Challal Mouloud, *Les gardes communaux et les GLD cibles privilégiées* (In French only - *Municipal guards and GSDs preferred targets*), Le Jeune Indépendant, 11 October 2001.

⁶⁵ Neïla B., *Les régions sécurisées concernées : L'opération de désarmement des GLD a commencé* (In French only - *GSD disarmament exercises begin in secure areas*), Liberté, 15 March 2010.

⁶⁶ Neïla B. *L'armée les dote d'un statut: Le MDN réhabilite les Patriotes*, (In French only - *The army provides them with a status: The army rehabilitates the Patriots by conferring official status*), Freedom, 10 April 2010.

central government, as in the case of DEC (Executive Municipal Delegations) leaders in 1992 who replaced the elected FIS mayors, who had been persecuted and imprisoned. The region of Relizane has been the subject of much talk because of local DEC militias which killed and disappeared hundreds of people.⁶⁷ In Kabylia, some members of the National Assembly had their own militia, which could number up to several hundred men.

These militias have been armed by the state, and they have acted together with the Algerian army. To this day, they accompany the military during security sweeps and also ensure the safety of infrastructure and major projects. Many atrocities were committed, many people were abducted and have disappeared; others were executed by militiamen. Human rights defenders have documented the violations committed by some of these militias, but none of their crimes have been brought to trial⁶⁸ and it is very likely that the provisions of the Ordinance implementing the Charter for Peace and Reconciliation will be applied to them.

Many militias appear to have been dismantled, particularly in areas that are considered safe. But some still exist today. According to press reports, Presidential Decree No. 42/09 of 24 October 2009 allowed members of the GSDs to be admitted to the ranks of the army under contract.⁶⁹ An additional Decree, No. 43/09/2009, establishes the conditions of this enrollment. Members are submitted to an annually renewed security investigation, benefit from social protection and care in military health facilities but must abide by the regulations applicable to military personnel. Under this contract, any political activity is prohibited. They are entitled to a monthly allowance that can reach 24 000 DA (240 euros, an amount that exceeds the minimum wage).⁷⁰

18. What is the difference between "Patriots" and members of Groups for Self-Defense?

19. How many GSDs are there, exactly? What is the exact number of people enrolled in these groups? Which authority are they placed under? Since the promulgation of Decree No. 42/09 of 24 October 2009, how many are now affiliated with the military? What has happened to the others? What are their exact powers and prerogatives? When do they act alone?

As for the Communal Guards, they have officially existed since 1996 (Executive Decree No. 96-265 of 3 August 1996). They were placed under the authority of the mayor and received two months' training. They wore uniforms and were supervised by the national gendarmerie alongside whom they fought against armed groups. They earned a monthly salary. If the press is to be believed, there were 80,000⁷¹ in 2001 and today there are 100,000.⁷² If these figures are correct, their numbers have increased as the security situation has improved. The body has undergone a certain professionalization, and there is talk of giving municipal police status to about 25,000 of them.⁷³ "After playing an important role in the fight against terrorism, many of these agents will be converted into a sort of administrative police force, similar to the territorial rangers of the 70s."⁷⁴ Other press reports indicate that some Communal Guards have joined the army: "Regarding their official status, members of the Communal Guards will be integrated into the ranks of the ANP (the *Armée Nationale Populaire*

⁶⁷ Mohamed Smain, *Relizane dans la tourmente, Silence! On tue...*, (In French only - *Relizane in turmoil; Silence! Killings under way...*), Bouchenez Publishing, 2004.

⁶⁸ Algeria-Watch and Salah-Eddine Sidhoum, *Les milices dans la nouvelle guerre d'Algérie* (In French only - *Militias in the new war in Algeria*), December 2003, http://www.algeria-watch.org/pdf/pdf_fr/milices_guerre.pdf.

⁶⁹ The decree was not published on the Official Journal website but GSD members have protested against this decree as it seems to grant them a status of "volunteer", see: H. Y., *Un décret considère les groupes d'autodéfense comme des volontaires* (In French only - *A decree considers the self-defense groups volunteers*), El Khabar, 11 December 2009.

⁷⁰ A. Benbrik, *Les patriotes et les GLD : Officiellement structurés et rattachés au MDN*, (In French only - *Patriots and GSDs formally structured and attached to the Army*), 29 December 2009 http://www.reflexiondz.net/LES-PATRIOTES-ET-GLD-Officiellement-structures-et-rattaches-au-MDN_a3786.html (accessed 6 August 2010).

⁷¹ Fouad Irnatene, *Hattab sera-t-il à la barre*, (In French only - *Will Hattab stand trial?*), L'Expression, 1 December 2008.

⁷² S. Ouahmed, *Le statut de la Garde communale finalisé avant 2010* (In French only - *Communal Guards' status to be finalized before 2010*), Liberté, 1 July 2009.

⁷³ Neïla B., *Ils auront un statut de paramilitaires: Des gardes communaux seront intégrés dans les rangs de l'armée* (In French only - *They will have paramilitary status: communal guards will be integrated into the ranks of the army*), Freedom, 5 May 2010.

⁷⁴ S. Ouahmed, *Le statut de la Garde communale finalisé avant 2010* (In French only - *Communal Guards' status to be finalized before 2010*), Liberté, 1 July 2009.

– the People’s National Army) as paramilitaries and mobilized in the fight against terrorism, ‘without any additional function.’ They will be under the direct control of military section chiefs.”⁷⁵

Many witnesses report very serious violations by municipal guards. People who were arrested or abducted by them, imprisoned on their premises and never reappeared figure among the disappeared. Communal Guards often accompanied the military and the police during their sweeps. In the region of Jijel, for example, its members regularly participated in military operations in which summary executions of civilians were common.

20. How many Communal Guards are there exactly? How are their statuses defined? What are their specific functions? On what occasions do they act alone?

21. Is article 45 of the Ordinance of the Charter for Peace and Reconciliation applicable to Groups for Self-Defense and Communal Guards?

10. Conclusion

The institutions set up under the Constitution are irrelevant and have no real autonomy; the executive, particularly the Department of Intelligence and Security, imposes its will on all aspects of political, economic and social life.

The structures responsible for the brutal repression of the 90s, particularly those related to the DRS, have been strengthened, and the officers responsible for serious human rights violations have all been promoted. Any time there is trouble, for example in cases of riots or significant revolts, the same reflexes apply, as shown during the riots that shook Kabyla in 2001.

The Algerian NHRI sets the limits of the debate on human rights. The issue of impunity remains a major problem, which threatens the future of Algeria. The era which began in February 2006 with the Charter for Peace and Reconciliation, a step heralded as a key part of a normalization plan, ignored the pain of hundreds of thousands of victims, who continue to have their rights to truth and justice violated. In an interview published on 13 August 2010 to mark the fifth anniversary of the promulgation of the Charter, Mr Ksentini summarized the position of the authorities, saying: "I believe that the charter is the Algerian people’s greatest victory. (...) Our task now is to definitively turn the page and forget the black decade. The main function of human memory is to forget, not to remember. (...) We will no longer talk about cases of missing persons; the problem was resolved with the introduction of the charter. (...) ‘Truth and justice’ is nothing more than a slogan! How can we really reconstruct the truth? There are no records, no testimony. As for justice, do these families really believe that the Algerian state could conceivably enter into lawsuits against some of its officers who perpetrated these disappearances? (...) The State does not need open itself to ridicule by engaging in litigation which it knows to be pointless. (...) It is in our interest to turn the page definitively. Algeria must now tackle the real problem, which is development.”⁷⁶

Given this official denial by the Algerian authorities, the role of UN agencies in general, and specifically that of the Committee against Torture, is even more important; Alkarama will continue to monitor the State’s compliance with its international obligations arising from its ratification of the Convention against Torture.

⁷⁵ Neila B., *Ils auront un statut de paramilitaires: Des gardes communaux seront intégrés dans les rangs de l’armée* (In French only - *They will have paramilitary status: communal guards will be integrated into the ranks of the army*), Freedom, 5 May 2010.

⁷⁶ LamiaTagzout, *Me Farouk Ksentini : "L’Etat n’a pas besoin de se ridiculiser en se lançant dans des procès qu’il sait impossibles"* (In French only - *Mr. Farouk Ksentini: "The state does not need to attract ridicule by engaging in pointless litigation"*), El Watan, 13 August 2010, <http://www.elwatan.com/L-Etat-n-a-pas-besoin-de-se>, (accessed 6 August 2010).